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ORGANIC ACT
OF THE
TERRITORY OF IDAHO;



TOGETHER WITH

THE AMENDMENTS THERETO.

APPROVED MARCH 3, 1863, AND JUNE 21, 1864.

FRANK KENYON
TERRITORIAL PRINTER.

1864

AN ACT

TO PROVIDE A TEMPORARY GOVERNMENT FOR THE TERRITORY OF IDAHO.

BE IT ENACTED by the Senate and House of Representatives of the United States in Congress assembled, That all that part of the territory of the United States included within the following limits, to-wit: Beginning at a point in the middle channel of the Snake River where the northern boundary of Oregon intersects the same; then follow down the said channel of Snake River to a point opposite the mouth of the Kooskooskia, or Clear Water River; thence due north to the forty-ninth parallel of latitude; thence east along said parallel to the twenty-seventh degree of longitude west of Washington; thence south along said degree of longitude to the northern boundary of Colorado Territory; thence west along said boundary to the thirty-third degree of longitude west of Washington; thence north along said degree to the forty-second parallel of latitude; thence west along said parallel to the eastern boundary of the State of Oregon; thence north along said boundary to the place of beginning. And the same is hereby created into a temporary government, by the name of the Territory of Idaho: Provided, That nothing in this Act contained shall be construed to inhibit the Government of the United States from dividing said Territory or changing its boundaries in such manner and at such time as Congress shall deem convenient and proper, or from attaching any portion of said Territory to any other State or Territory of the United States: Provided, further, That nothing in this Act contained shall be construed to impair the rights of person or property now pertaining to the Indians in said Territory, so long as such rights shall remain unextinguished by treaty between the United States and such Indians, or to include any territory which, by treaty with any Indian tribes, is not, without the consent of said tribe, to be included within the territorial limits or jurisdiction of any State or Territory; but all such territory shall be excepted out of the boundaries, and constitute no part of the Territory of Idaho, until said tribe shall signify their assent to the President of the United States to be included within said Territory, or to affect the authority of the Government of the United States to make any regulations respecting such Indians, their lands, property, or other rights, by treaty, law, or otherwise, which it would have been competent for the Government to make if this Act had never passed.

SEC. 2. And be it further enacted, That the executive power and authority in and over said Territory of Idaho shall be vested in a Governor, who shall hold his office for four years, and until his succes-

sor shall be appointed and qualified, unless sooner removed by the President of the United States. The Governor shall reside within said Territory, and shall be commander-in-chief of the militia, and superintendent of Indian affairs thereof. He may grant pardons and respites for offences against the laws of said Territory, and reprieve for offences against the laws of the United States until the decision of the President of the United States can be made known thereon; he shall commission all officers who shall be appointed to office under the laws of the said Territory, and shall take care that the laws be faithfully executed.

SEC. 3. And be it further enacted, That there shall be a Secretary of said Territory, who shall reside therein, and shall hold his office for four years, unless sooner removed by the President of the United States; he shall record and preserve all laws and proceedings of the legislative assembly hereinafter constituted, and all the acts and proceedings of the Governor in his executive department; he shall transmit one copy of the laws and journals of the legislative assembly within thirty days after the end of each session, and one copy of the executive proceedings and official correspondence semi-annually, on the first days of January and July in each year, to the President of the United States, and two copies of the laws to the President of the Senate and to the Speaker of the House of Representatives for the use of Congress; and in case of the death, removal, resignation, or absence of the Governor from the Territory, the Secretary shall be, and he is hereby, authorized and required to execute and perform all the powers and duties of the Governor during such vacancy or absence, or until another Governor shall be duly appointed and qualified to fill such vacancy.

SEC. 4. And be it further enacted, That the legislative power and authority of said Territory shall be vested in the Governor and legislative assembly. The legislative assembly shall consist of a Council and House of Representatives. The Council shall consist of seven members having the qualifications of voters as hereinafter prescribed, whose term of service shall continue two years. The House of Representatives shall, at its first session, consist of thirteen members possessing the same qualifications as prescribed for the members of the Council, and whose term of service shall continue one year. The number of representatives may be increased by the legislative assembly, from time to time, to twenty-six in proportion to the increase of qualified voters; and the Council, in like manner, to thirteen. An apportionment shall be made as nearly equal as practicable among the several counties or districts for the election of the Council and Representatives, giving to each section of the Territory representation in the ratio of

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its qualified voters as nearly as may be. And the members of the Council and of the House of Representatives shall reside in, and be inhabitants of, the district or county, or counties, for which they may be elected respectively. Previous to the first election, the Governor shall cause a census or enumeration of the inhabitants and qualified voters of the several counties and districts of the Territory to be taken by such persons and in such mode as the Governor shall designate and appoint, and the persons so appointed shall receive a reasonable compensation therefor. And the first election shall be held at such time and places, and be conducted in such manner both as to the persons who shall superintend such election and the returns thereof, as the Governor shall appoint and direct; and he shall at the same time, declare the number of members of the Council and House of Representatives to which each of the counties or districts shall be entitled under this Act. The persons having the highest number of legal votes in each of said council districts for members of the Council shall be declared by the Governor to be duly elected to the Council; and the persons having the highest number of legal votes for the House of Representatives shall be declared by the Governor to be duly elected members of said House: Provided, That in case two or more persons voted for shall have an equal number of votes, and in case a vacancy shall otherwise occur in either branch of the legislative assembly, the Governor shall order a new election; and the persons thus elected to the legislative assembly shall meet at such place and on such day as the Governor shall appoint; but thereafter the time, place, and manner of holding and conducting all elections by the people, and the apportioning the representation in the several counties or districts to the Council and House of Representatives, according to the number of qualified voters, shall be prescribed by law, as well as the day of the commencement of the regular sessions of the legislative assembly: Provided, That no session in any one year shall exceed the term of forty days, except the first session, which may continue sixty days.

SEC. 5. And be it further enacted, That every free white male inhabitant above the age of twenty-one years, who shall have been an actual resident of said Territory at the time of the passage of this Act, shall be entitled to vote at the first election, and shall be eligible to any office within the said Territory; but the qualifications of voters, and of holding office, at all subsequent elections, shall be such as shall be prescribed by the legislative assembly.

SEC. 6. And be it further enacted, That the legislative power of the Territory shall extend to all rightful subjects of legislation consistent with the Constitution of the United States and the provisions of this Act; but no law shall be passed interfering with the primary disposal

of the soil ; no tax shall be imposed upon the property of the United States, nor shall the lands or other property of non-residents be taxed higher than the lands or other property of residents. Every bill which shall have passed the Council and House of Representatives of the said Territory shall, before it becomes a law, be presented to the Governor of the Territory; if he approve, he shall sign it; but if not, he shall return it, with his objections, to the House in which it originated, who shall enter the objections at large upon their journal and proceed to reconsider it. If, after such reconsideration, two thirds of that House shall agree to pass the bill, it shall be sent, together with the objections, to the other House, by which it shall likewise be reconsidered; and if approved by two thirds of that House, it shall become a law. But in all such cases the votes of both Houses shall be determined by yeas and nays, to be entered on the journal of each House respectively. If any bill shall not be returned by the Governor within three days (Sunday excepted) after it shall have been presented to him, the same shall be a law in like manner as if he had signed it, unless the assembly, by adjournment, prevent its return; in which case it shall not be a law: Provided, That whereas slavery is prohibited in said Territory by act of Congress of June nineteenth, eighteen hundred and sixty-two, nothing herein contained shall be construed to authorize or permit its existence therein.

SEC. 7. And be it further enacted, That all township, district, and county officers, not herein otherwise provided for, shall be appointed or elected, as the case may be, in such manner as shall be provided by the Governor and legislative assembly of the Territory of Idaho. The Governor shall nominate and, by and with the advice and consent of the legislative council, appoint all officers not herein otherwise provided for; and in the first instance the Governor alone may appoint all said officers, who shall hold their offices until the end of the first session of the legislative assembly, and shall lay off the necessary districts for members of the Council and House of Representatives, and all other officers.

SEC. 8. And be it further enacted, That no member of the legislative assembly shall hold or be appointed to any office which shall have been created, or the salary or emoluments of which shall have been increased, while he was a member, during the term for which he was elected, and for one year after the expiration of such term; but this restriction shall not be applicable to members of the first legislative assembly; and no person holding a commission or appointment under the United States, except postmasters, shall be a member of the legislative assembly, or shall hold any office under the government of said Territory.

SEC. 9. And be it further enacted, That the judicial power of said Territory shall be vested in a Supreme Court, District Courts, Probate Courts, and in Justices of the Peace. The Supreme Court shall consist of a Chief Justice and two associate Justices, any two of whom shall constitute a quorum, and who shall hold a term at the seat of government of said Territory annually; and they shall hold their offices during the period of four years, and until their successors shall be appointed and qualified. The said Territory shall be divided into three judicial districts, and a District Court shall be held in each of said districts by one of the Justices of the Supreme Court at such times and places as may be prescribed by law; and the said Judges shall, after their appointments, respectively, reside in the districts which shall be assigned them. The jurisdiction of the several courts herein provided for, both Appellate and Original, and that of the Probate Courts and of Justices of the Peace, shall be limited by law: Provided, That Justices of the Peace shall not have jurisdiction of any matter in controversy when the title or boundaries of land may be in dispute, or where the debt or sum claimed shall exceed one hundred dollars; and the said Supreme and District Courts, respectively, shall possess chancery as well as common-law jurisdiction. Each District Court, or the Judge thereof, shall appoint its clerk, who shall also be the register in chancery, and shall keep his office at the place where the court may be held. Writs of error, bills of exceptions, and appeals, shall be allowed in all cases from the final decisions of said District Courts to the Supreme Court, under such regulations as may be prescribed by law. The Supreme Court, or the Justices thereof, shall appoint its own clerk, and every clerk shall hold his office at the pleasure of the court for which he shall have been appointed. Writs of error and appeals from the final decisions of said Supreme Court shall be allowed, and may be taken to the Supreme Court of the United States, in the same manner and under the same regulations as from the Circuit Courts of the United States, where the value of the property or the amount in controversy, to be ascertained by the oath or affirmation of either party, or other competent witnesses, shall exceed one thousand dollars, except that a writ of error or appeal shall be allowed to the Supreme Court of the United States from the decision of the said Supreme Court created by this Act, or of any Judge thereof, or of the District Courts created by this Act, or of any Judge thereof, upon any writs of habeas corpus involving the question of personal freedom. And each of the said District Courts shall have and exercise the same jurisdiction, in all cases arising under the Constitution and laws of the United States, as is vested in the Circuit and District Courts of the United States; and the first six days of every term of said Courts, or so much thereof

as shall be necessary, shall be appropriated to the trial of causes arising under the said Constitution and laws; and writs of error and appeal in all such cases shall be made to the Supreme Court of said Territory, the same as in other cases. The said clerks shall receive, in all such cases, the same fees which the clerks of the District Courts of Washington Territory now receive for similar services.

SEC. 10. And be it further enacted, That there shall be appointed an attorney for said Territory, who shall continue in office four years, and until his successor shall be appointed and qualified, unless sooner removed by the President of the United States, and who shall receive the same fees and salary as the attorney of the United States for the present Territory of Washington. There shall also be a Marshal for the Territory appointed, who shall hold his office for four years, and until his successor shall be appointed and qualified, unless sooner removed by the President of the United States, and who shall execute all processes issuing from the said Courts when exercising their jurisdiction as Circuit and District Courts of the United States; he shall perform the duties, be subject to the same regulations and penalties, and be entitled to the same fees as the Marshal of the District Court of the United States for the present Territory of Washington, and shall, in addition, be paid two hundred dollars annually as a compensation for extra services.

SEC. 11. And be it further enacted, That the Governor, Secretary, Chief Justice, and Associate Justices, Attorney and Marshal, shall be appointed by the President of the United States, by and with the advice and consent of the Senate. The Governor and Secretary to be appointed as aforesaid, shall, before they act as such, respectively take an oath or affirmation before the District Judge, or some Justice of the Peace in the limits of said Territory duly authorized to administer oaths and affirmations by the laws now in force therein, or before the Chief Justice, or some Associate Justice of the Supreme Court of the United States, to support the Constitution of the United States, and faithfully to discharge the duties of their respective offices, which said oaths, when so taken, shall be certified by the person by whom the same shall have been taken; and such certificates shall be received and recorded by the said Secretary among the executive proceedings; and the Chief Justice and Associate Justices, and all civil officers in said Territory, before they act as such, shall take a like oath or affirmation before the said Governor, or Secretary, or some Judge or Justice of the Peace of the Territory, who may be duly commissioned and qualified, which said oath or affirmation shall be certified and transmitted by the person taking the same to the Secretary, to be by him recorded as aforesaid; and afterwards the

like oath or affirmation shall be taken, certified, and recorded in such manner and form as may be prescribed by law. The Governor shall receive an annual salary of two thousand five hundred dollars, the Chief Justice and Associate Justices shall receive an annual salary of two thousand five hundred dollars, the Secretary shall receive an annual salary of two thousand dollars; the said salaries shall be paid quarter-yearly, from the dates of the respective appointments, at the Treasury of the United States; but no payment shall be made until said officers shall have entered upon the duties of their respective appointments. The members of the legislative assembly shall be entitled to receive four dollars each per day, during their attendance at the sessions thereof, and four dollars each for every twenty miles' travel in going to and returning from said sessions, estimated according to the nearest usually traveled route, and an additional allowance of four dollars per day shall be paid to the presiding officer of each House for each day he shall so preside. And a Chief Clerk, one Assistant Clerk, one Engrossing and one Enrolling Clerk, a Sergeant-at-arms and Door-keeper may be chosen for each House; and the Chief Clerk shall receive four dollars per day, and the said other officers three dollars per day, during the session of the legislative assembly; but no other officers shall be paid by the United States: Provided, That there shall be but one session of the legislative assembly annually, unless, on an extraordinary occasion, the Governor shall think proper to call the legislative assembly together. There shall be appropriated annually the usual sum to be expended by the Governor to defray the contingent expenses of the Territory, including the salary of the Clerk of the executive department; and there shall also be appropriated annually a sufficient sum, to be expended by the Secretary of the Territory, and upon an estimate to be made by the Secretary of the Treasury of the United States, to defray the expenses of the legislative assembly, the printing of the laws, and other incidental expenses; and the Governor and Secretary of the Territory shall, in the disbursement of all moneys intrusted to them, be governed solely by the instructions of the Secretary of the Treasury of the United States, and shall, semi-annually, account to the said Secretary for the manner in which the aforesaid moneys shall have been expended; and no expenditure shall be made by said legislative assembly for objects not specially authorized by the Acts of Congress making the appropriations, nor beyond the sums thus appropriated for such objects.

SEC. 12. And be it further enacted, That the legislative assembly of the Territory of Idaho shall hold its first session at such time and place in said Territory as the Governor thereof shall appoint and

direct; and at said first session, or as soon thereafter as they shall deem expedient, the Governor and legislative assembly shall proceed to locate and establish the seat of government for said Territory at such place as they may deem eligible: Provided, That the seat of government fixed by the Governor and legislative assembly shall not be at any time changed, except by an Act of the said assembly duly passed, and which shall be approved, after due notice, at the first general election thereafter, by a majority of the legal votes cast on that question.

SEC. 13. And be it further enacted, That a Delegate to the House of Representatives of the United States, to serve for the term of two years, who shall be a citizen of the United States, may be elected by the voters qualified to elect members of the legislative assembly, who shall be entitled to the same rights and privileges as are exercised and enjoyed by the Delegates from the several other Territories of the United States to the said House of Representatives; but the Delegate first elected shall hold his seat only during the term of the Congress to which he shall be elected. The first election shall be held at such time and places, and be conducted in such manner as the Governor shall appoint and direct; and at all subsequent elections the times, places, and manner of holding elections shall be prescribed by law. The person having the greatest number of legal votes shall be declared by the Governor to be duly elected, and a certificate thereof shall be given accordingly. That the Constitution and all laws of the United States which are not locally inapplicable shall have the same force and effect within the said Territory of Idaho as elsewhere within the United States.

SEC. 14. And be it further enacted, That when the lands in the said Territory shall be surveyed, under the direction of the Government of the United States, preparatory to bringing the same into market, sections numbered sixteen and thirty-six in each township in said Territory shall be, and the same are hereby reserved for the purpose of being applied to schools in said Territory, and in the States and Territories hereafter to be erected out of the same.

SEC. 15. And be it further enacted, That, until otherwise provided by law, the Governor of said Territory may define the judicial districts of said Territory, and assign the Judges who may be appointed for said Territory to the several districts, and also appoint the times and places for holding courts in the several counties or subdivisions in each of said judicial districts, by proclamation to be issued by him; but the legislative assembly, at their first or any subsequent session, may organize, alter, or modify such judicial districts, and assign the

Judges, and alter the times and places of holding the courts, as to them shall seem proper and convenient.

SEC. 16. And be it further enacted, That all officers to be appointed by the President of the United States, by and with the advice and consent of the Senate, for the Territory of Idaho, who, by virtue of the provisions of any law now existing, or which may be enacted by Congress, are required to give security for moneys that may be intrusted with them for disbursement, and shall give such security at such time and in such manner as the Secretary of the Treasury may prescribe.

SEC. 17. And be it further enacted, That all treaties, laws, and other engagements made by the Government of the United States with the Indian tribes inhabiting the territory embraced within the provisions of this Act, shall be faithfully and rigidly observed, anything contained in this Act to the contrary notwithstanding; and that the existing agencies and superintendencies of said Indians be continued with the same powers and duties which are now prescribed by law, except that the President of the United States may, at his discretion, change the location of the office of said agencies or superintendents.

APPROVED, March 3, 1863.

AMENDMENTS.

AN ACT TO AMEND AN ACT ENTITLED "AN ACT TO PROVIDE A TEMPORARY GOVERNMENT FOR THE TERRITORY OF IDAHO," APPROVED MARCH THREE, EIGHTEEN HUNDRED AND SIXTY-THREE.

BE IT ENACTED by the Senate and House of Representatives of the United States of America in Congress assembled, That the Governor of the Territory of Idaho be, and he is hereby, authorized to reapportion said Territory for the election of members of the Council and House of Representatives of the legislative assembly: Provided, That said apportionment shall be based on an enumeration of the inhabitants and qualified voters of the several counties and districts of the Territory, to be taken by such persons, and in such mode as the Governor shall designate and appoint. and the persons so appointed shall receive a reasonable compensation therefor, to be paid out of the Territorial treasury: Provided, further, That this Act shall not be construed to divest any member of the Council, elected at the first election in said Territory, of any rights he may have acquired by virtue of said election, who was elected from any county or district within the present limits of the Territory of Idaho.

SEC. 2. And be it further enacted, That the annual election in said Territory for the election of all officers, provided for by the laws of said Territory, for the year eighteen hundred and sixty-four, shall be held at such places as is now provided by law, and such other places as the Governor may direct, on the second Monday of October.

APPROVED, June 21st, 1864.